

# **EXHIBIT D**

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
DURHAM DIVISION

THOMAS KRAKAUER, on )  
behalf of a class of )  
persons, )  
Plaintiff, )  
vs. ) Case No.: 14-CV-333  
DISH NETWORK, )  
Defendant. )  
\_\_\_\_\_)

VIDEOTAPED DEPOSITION OF DAVID HILL  
San Ramon, California  
Friday, October 10, 2014

BY: HEIDI BELTON, CSR, RPR, CRR, CCRR, CLR  
CSR LICENSE NO. 12885  
JOB NO. 83910

1                               October 10, 2014

2                               9:21 a.m.

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4       Videotaped deposition of DAVID HILL, held at the  
5       offices of Five9, 4000 Executive Parkway, San Ramon,  
6       California, before Heidi Belton, a Certified  
7       Shorthand Reporter, Registered Professional  
8       Reporter, Certified Realtime Reporter, California  
9       Certified Realtime Reporter, Certified LiveNote  
10      Reporter, and NCRA Realtime Systems Administrator.

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1     A P P E A R A N C E S:

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3     For the Plaintiff THOMAS H. KRAKAUER, et al.:

4             BRODERICK LAW

5             125 Summer Street

6             Boston, Massachusetts 02110

7             By: Anthony Paronich, Esq.

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10  
11     For the Defendant DISH Network, LLC:

12             BENESCH, FRIEDLANDER, COPLAN & ARONOFF

13             200 Public Square

14             Cleveland, Ohio 44114

15             By: Eric Zalud, Esq.

1     A P P E A R A N C E S (Con't):

3     For the Witness David Hill and Five9:

4             KELLEY DRYE & WARREN

5             333 West Wacker Drive

6             Chicago, Illinois 60606

7             By: Henry Kelly, Esq.

11    Also Present: Cassia Leet, videographer

1           Q     All right. And this was submitted after  
2 the subpoena you just mentioned?

3           A     Yes.

4           Q     And tell me how did this affidavit come to  
5 be prepared?

6           A     This affidavit was prepared from my  
7 counsel, from our legal counsel.

8           Q     And did you supply some of the information  
9 for the affidavit?

10          A     I reviewed the information and -- and  
11 finalized it before signature.

12          Q     You confirmed the accuracy of the  
13 information on there?

14          A     Yes, that's correct.

15          Q     I'm going to have some more questions for  
16 you on that in a little bit. But tell me a little  
17 bit about Five9. What kind of company is Five9?

18          A     Five9 is a cloud-based content center  
19 company providing software to that space.

20          Q     About how many employees?

21          A     Globally we have just over 600.

22          Q     Headquarters are here in San Ramon?

23          A     Yes.

24          Q     Other offices in other cities?

25          A     In the US there are no established

1 Five9 doesn't really provide a phone system for its  
2 customers; it provides more of a software system or  
3 platform for their calls to be connected and made?

4 A Yes, I believe that's accurate. It's a  
5 software system.

6 Q I represent DISH Network, Mr. Hill. Have  
7 you ever had any contact with DISH Network from a  
8 business perspective?

9 A I don't believe so.

10 Q Are you aware of any contract that Five9  
11 might have with DISH Network for the provision of  
12 any types of services?

13 A I'm not aware of one.

14 Q Do you know if Five9 has any customers who  
15 are DISH Network retailers?

16 A I'm not aware of any.

17 Q Have you heard of a company called  
18 Satellite Systems Network?

19 A Yes.

20 Q And tell me what you've heard about that  
21 company.

22 A Only what I have read in preparation for  
23 this deposition. Reviewing their contract.

24 Q Their contract with Five9?

25 A That is correct.

1 accurate.

2 Q All right. Thank you, sir. So I'm going  
3 to direct your attention to paragraph number 4 on  
4 the first page. And that -- I'm going to read it  
5 because it's brief. "Five9's VCC" -- and that's the  
6 virtual contact center; correct?

7 A Yes.

8 Q -- "can be configured by customers to  
9 operate as a predicted dialer." And the text goes  
10 on but this is what relates to my question.  
11 "Configured by customers." Can you explain to me  
12 how that works?

13 A Customers configure -- customers when they  
14 sign up with Five9, they're given a generic domain  
15 or access to Five9's services. They then are --  
16 they then determine how to use our service. One of  
17 the options for them to use our service is to set up  
18 predictive dialing. And as we've alluded to  
19 previously, "predictive" is just meant to predict  
20 the availability of a [sic] agent so that a call  
21 will be ready when that agent becomes available.

22 Q So I understood all of that. So thank  
23 you. But I do still have a couple of more questions  
24 about --

25 A Sure.